



FARM COMMONS

Farmer's Guide to Anti-Corporate Farming Laws

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DISCLAIMER: This guide does not provide legal advice or establish an attorney client relationship between the reader and author. Always consult an attorney regarding your specific situation.

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Prohibitions on Farmland Ownership and Leasing

Several Midwestern states limit the ability of corporations and LLCs to control farms and farmland. The statutes laying out these rules are commonly referred to as “anti-corporate farming” laws. Although they vary, these laws generally prohibit limited liability companies and corporations from owning or leasing farmland. Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota and Wisconsin all have anti-corporate farming laws on the books.

Despite the breadth of these laws, many farm business entities will not be directly affected. Farm LLCs and corporations usually do not actually own farmland, so prohibitions on farmland ownership are not a problem. Instead, an individual shareholder or member maintains title to farmland itself; ownership is not transferred to the entity. Farmers often do this for liability insulation. Because the farm businesses assets are still available to satisfy farm business liabilities, maintaining the land in private, individual ownership protects it from business liabilities. In these cases, the individual shareholder or member leases the farmland to the business entity.

Where state law also prohibits LLCs and corporations from leasing farmland, of course, farmers might still run into problems. In these cases, farmers often rely on exceptions for small and family owned farm businesses. Every state with an anti-corporate farming law allows entities with just a few related shareholders or members to own or lease farmland.

Innovative and less traditional farm business entities may face potential complications with anti-corporate farming laws. The affordability of farmland is a barrier for many beginning farmers. To deal with this problem, communities are creating innovative opportunities for groups of people to contribute money to an emerging farm business operation in exchange for a later return on their investment. In other areas, farmers are organizing LLCs, corporations, and cooperatives to collectively purchase and manage farmland as a group. Both of these examples can lead to inadvertent violations of anti-corporate farming laws, as this chapter will illustrate.

Why Do these Laws Exist?

Most anti-corporate farming laws were passed between the 1930s and the 1970s with a goal of protecting and preserving smaller family-based farms as the ideal

“Several Midwestern states have statutes—or “anti-corporate” farming” laws—that limit the ability of corporations and LLCs to control farms and farmland.”

ownership structure. Tightly-knit farm operations are perceived as more closely connected to the land and thus more inclined to faithfully guard farmland resources. When these laws were passed, the vast majority of farms were organized as sole proprietorships or general partnerships. Farm corporations were rare and limited liability companies did not exist in many states when these laws were passed. Corporations were viewed suspiciously, as distant, anonymous, and not responsible to the communities in which they operate, and still are viewed that way by many. The road hasn't been a smooth one for anti-corporate farming laws. Constitutional challenges and modification by legislatures have weakened or eliminated state laws or individual provisions. Even farm advocates feel these laws have not fulfilled their original objective and are just a trap for the unwary. Some rural communities feel these laws limit solutions to the complex but endemic problem of the loss of small, family farms from the countryside. Regardless of their practical effect, these laws are still a relevant consideration for beginning farm businesses in the Midwest.

“Anti-corporate farming laws are still the rule in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin.”

Look Before You Leap

Anti-corporate farming laws are still the rule in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin. Farmers in these states who are considering forming a corporation or LLC should consult our flowcharts, first. But before we get there, please keep these important notes in mind.

These flowcharts:

- Are designed to help farmers identify if they have issues for further exploration.
- Do not provide definitive answers about how anti-corporate farming laws affect a specific operation.
- Do not thoroughly explain each state's laws.
- Do not explore all possible exceptions or explain all obligations for any enterprise.

This chapter and the accompanying flowcharts are designed to be read in connection with our “Farmers Guide To Business Entities” as a whole. Unlike previous chapters, this chapter does not go into detail about what a shareholder or member is or what the phrase “percentage interest” means, to highlight just two examples. Farmers should read this guide as a whole before delving into this

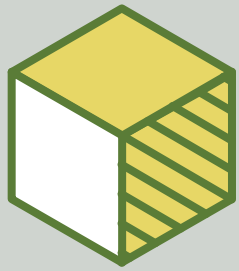
If you are in one of these Midwestern states, be sure to consult our flowcharts in the next section before forming a corporation or LLC.

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“The flowcharts are designed to assist farmers in identifying whether they may be eligible for an exemption from ownership or leasing of farmland.”
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section. Anti-corporate farming laws are always subject to legislative change and evolving interpretations by the courts. Remember, these flowcharts are only designed to assist farmers in identifying whether they may be eligible for an exemption from ownership or leasing of farmland. All farmers will need to seek more information from an attorney to fully understand their obligations.

Next Steps

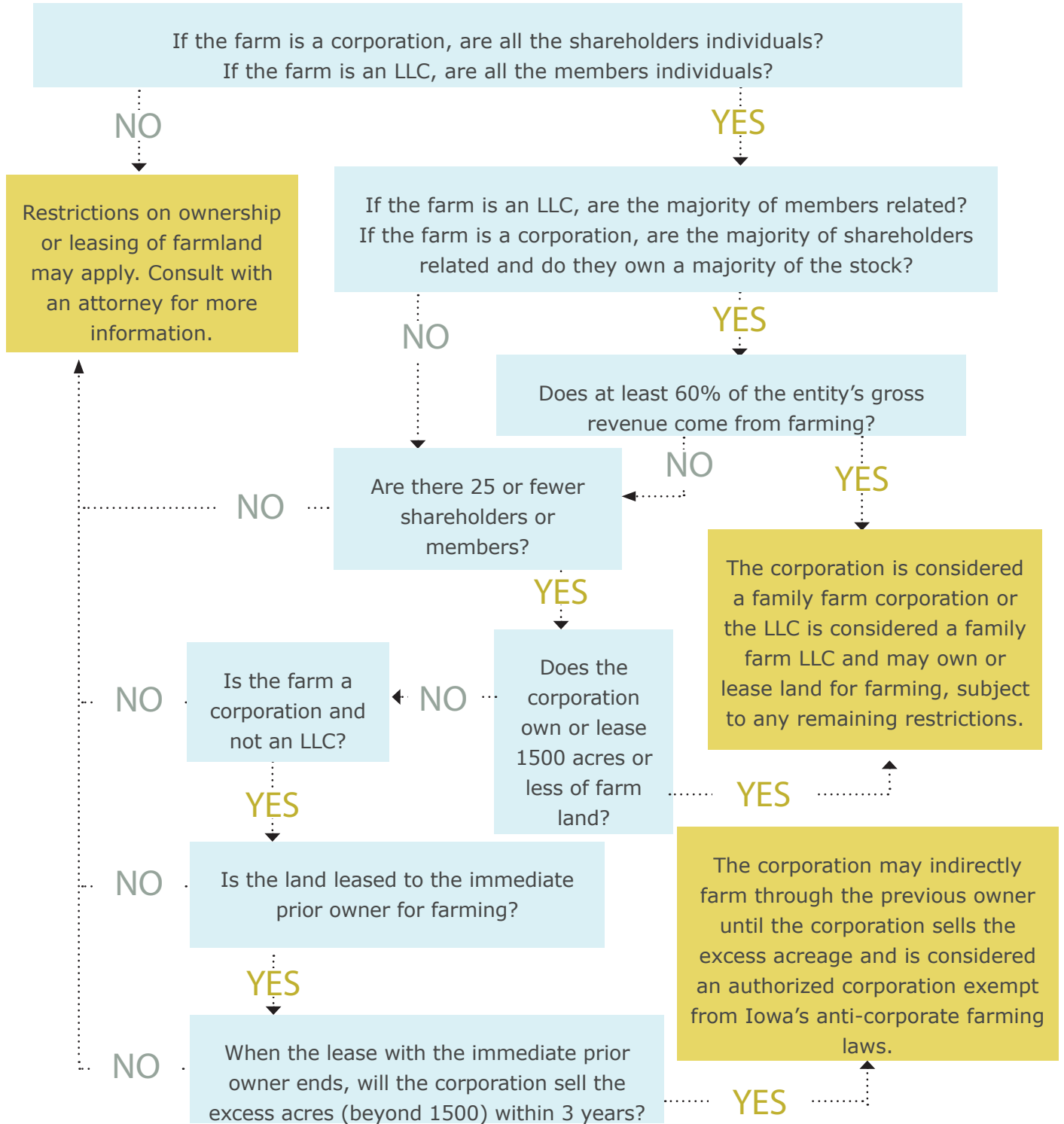
Farmers in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin should check the flowcharts on the following pages if they are considering forming an LLC or a corporation.



Anti-Corporate Farming Laws: State Specific Flowcharts

Iowa Anti-Corporate Farming Flowchart

Broadly speaking, Iowa law prohibits corporations and LLCs from owning or leasing farmland. However, there are broad exceptions for entities with related owners, smaller entities, and other types of operations or uses of farmland. The following flowchart provides an overview of some parts of the Iowa law.



Minnesota Anti-Corporate Farming Flowchart

Minnesota generally prohibits corporations and LLCs from engaging in farming and from owning or leasing farmland. Minnesota law exempts several types of entities and operations from this restriction including nonprofit organizations, some types of livestock operations, small entities, family owned entities, and those with owners engaged in farming, among other exceptions. The following is an overview of some parts of the Minnesota law.

Does the corporation or LLC own fewer than 40 acres of land and receive less than \$150 per acre in gross revenue from farming and land rental annually?

NO

YES

Are the majority of the stockholders/ members persons (or beneficiaries of

The entity is considered "de minimis," and may own or lease land for farming, subject to any remaining restrictions including

See Box A

NO

YES

NO

Does the entity have 5 or fewer shareholders?

Does this majority of related stockholders/ members also hold a majority of the stock/ interest?

Is the farm an LLC?

YES

YES

NO

NO

YES

NO

Was the agricultural land owned by one or more of the related persons for 5 years before the

YES

BOX A
Restrictions on farming activities, ownership or leasing of farmland may apply.

Does at least one of the related persons reside on or actively operate

YES

NO

YES

Are any of the stockholders/ members corporations or LLCs?

NO

Do any revenues derived from rent, royalties, dividends, interest and annuities

See Box A

YES

Is there only one class of members/ shareholders?

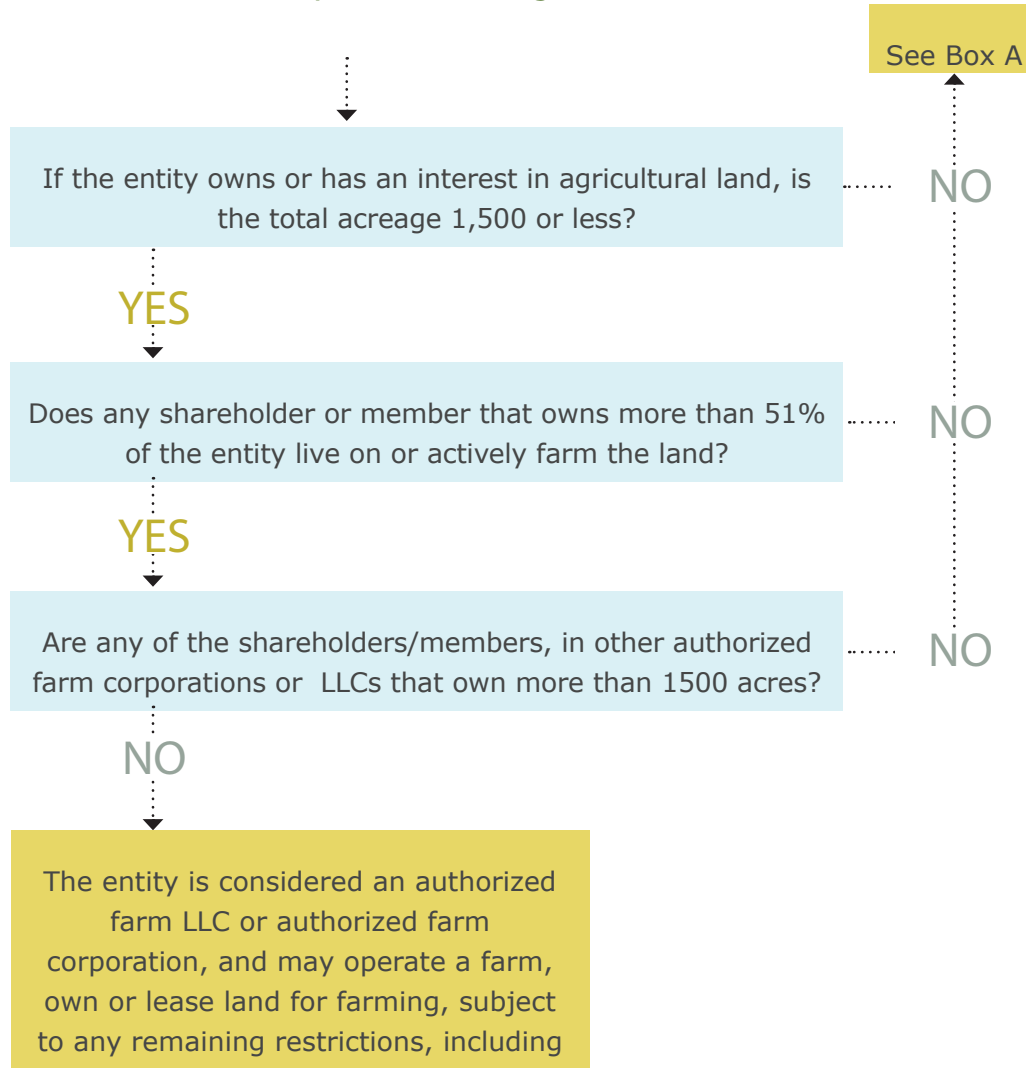
NO

YES

Are all members/ shareholders individuals (including estates or family

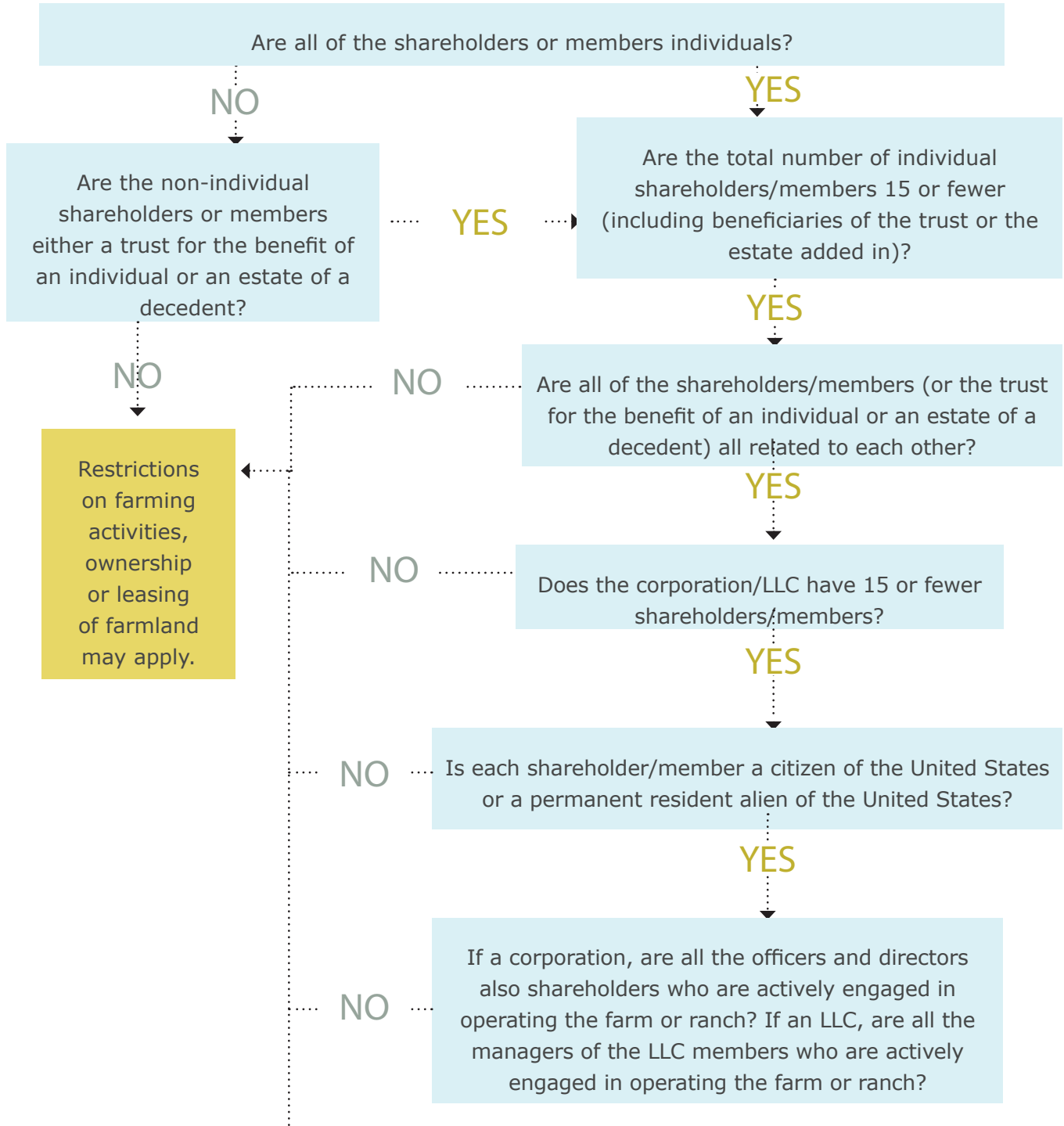
The entity is considered a family farm corporation or a family farm LLC, and may operate a farm, own or lease land for farming, subject to any remaining restrictions, including the requirement

Minnesota Anti-Corporate Farming Flowchart Cont.

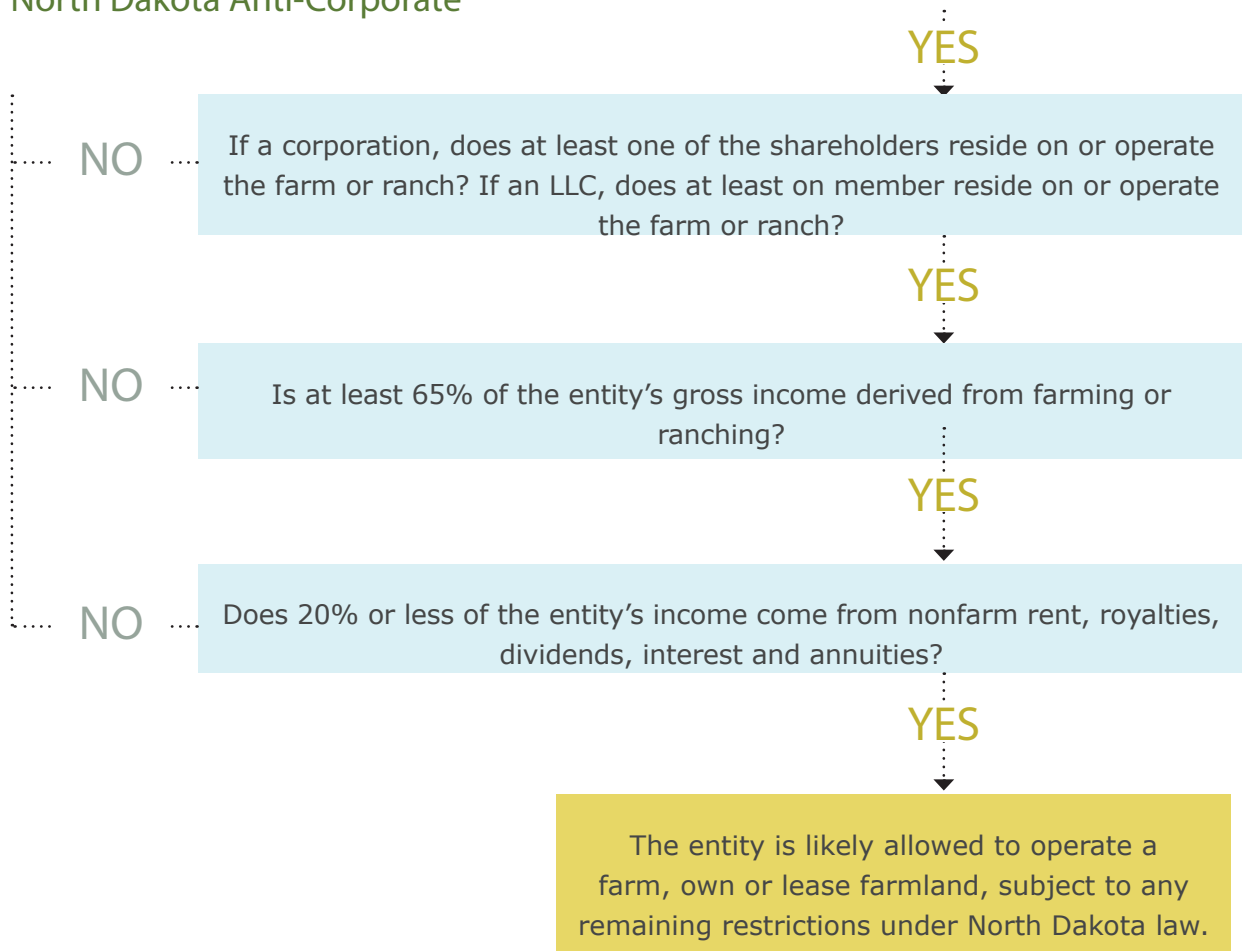


North Dakota Anti-Corporate Farming Flowchart

North Dakota law prohibits corporations and LLCs from owning or leasing land for farming and ranching and from engaging in the business of farming or ranching. However, there are exceptions for small, family-based entities, among others. The flowchart below is an overview of certain exemptions for corporations and LLCs.

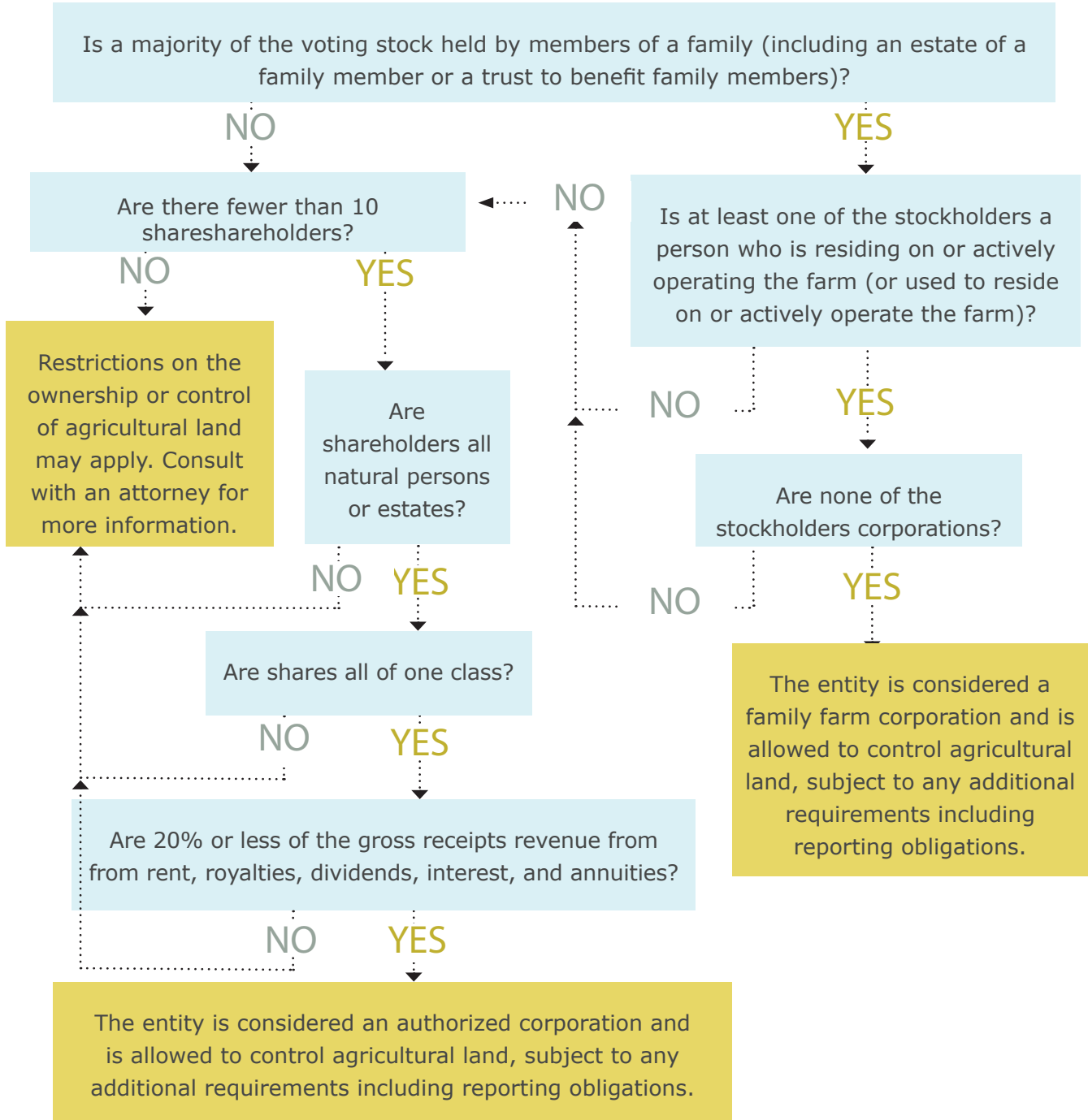


North Dakota Anti-Corporate



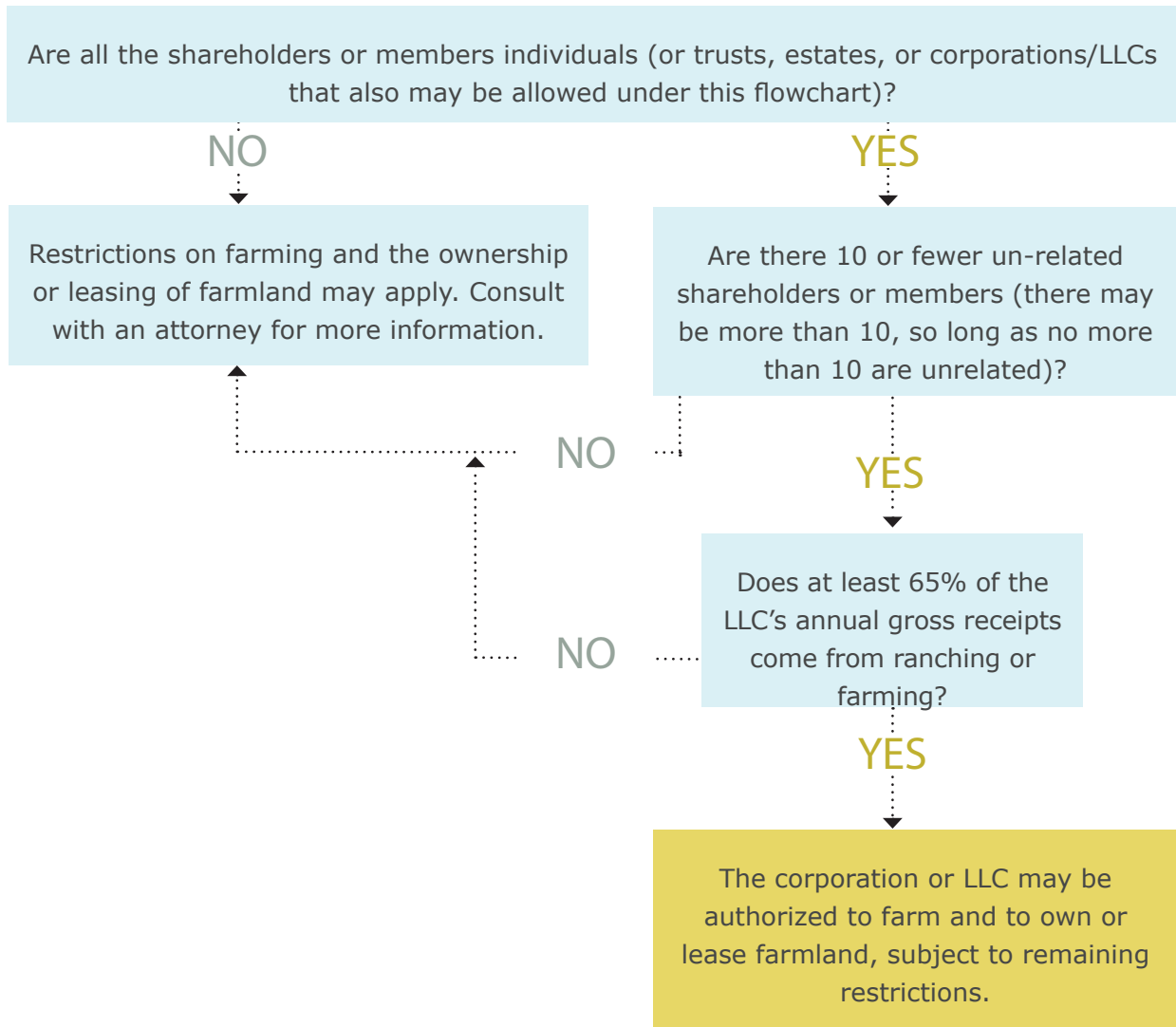
South Dakota Anti-Corporate Farming Flowchart

The South Dakota law prohibits corporations and LLCs from controlling agricultural land by owning or leasing it. The law provides exceptions for corporations that are small, engaged in farming, and family operated. The flowchart below explores some aspects of these exceptions to South Dakota's law. It is unclear if South Dakota law applies to LLCs. Farmers considering forming an LLC should read the flowchart below as if they were forming a corporation. If the anti-corporate farming law might apply to the operation, a person forming an LLC should also seek counsel.



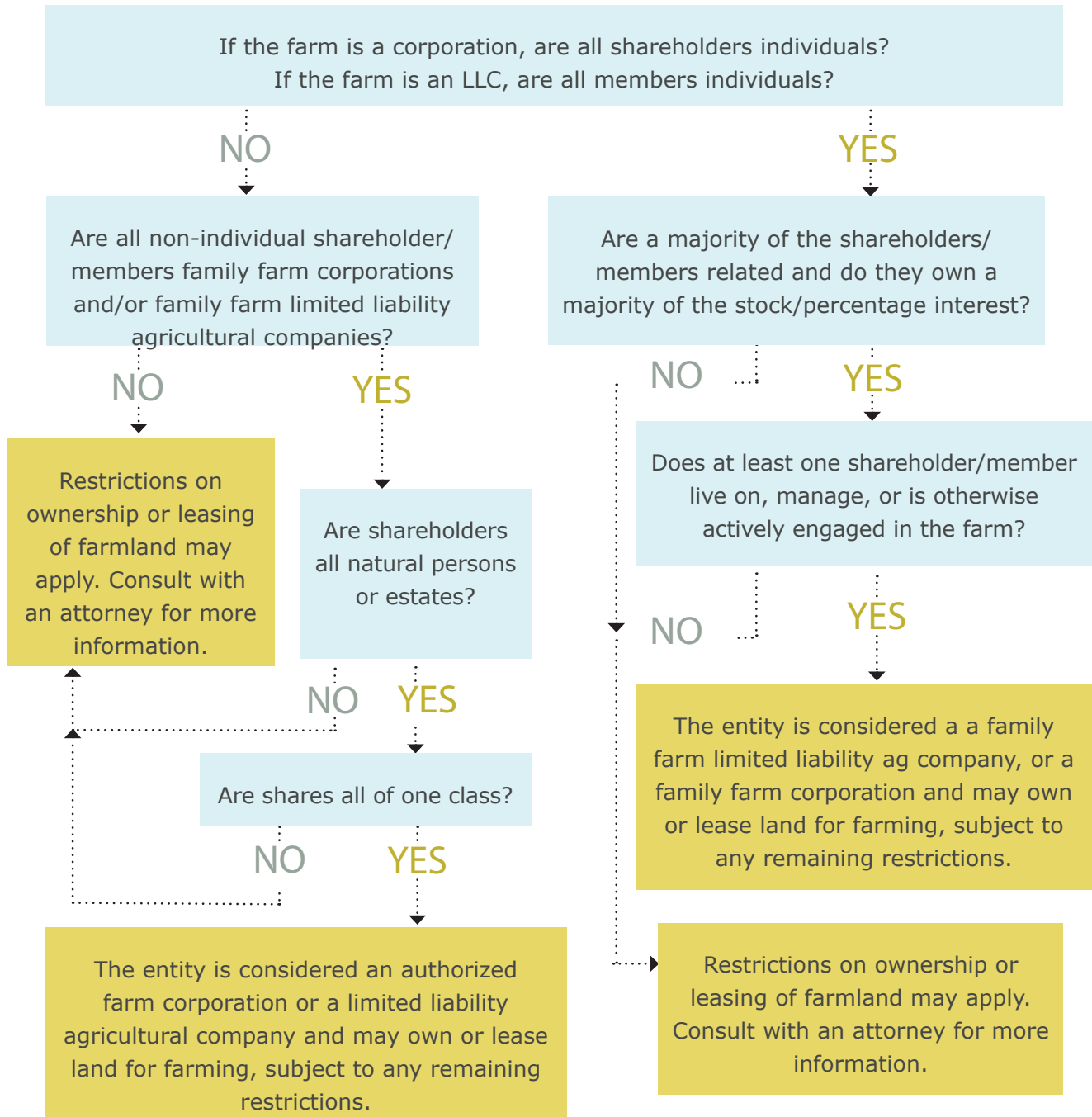
Oklahoma Anti-Corporate Farming Flowchart

Oklahoma law generally prohibits corporations and other entities from engaging in farming or ranching and from owning or leasing farmland. Oklahoma law has exceptions for small and family owned corporations and LLCs, among other exemptions. The flowchart below explores some aspects of these exceptions.



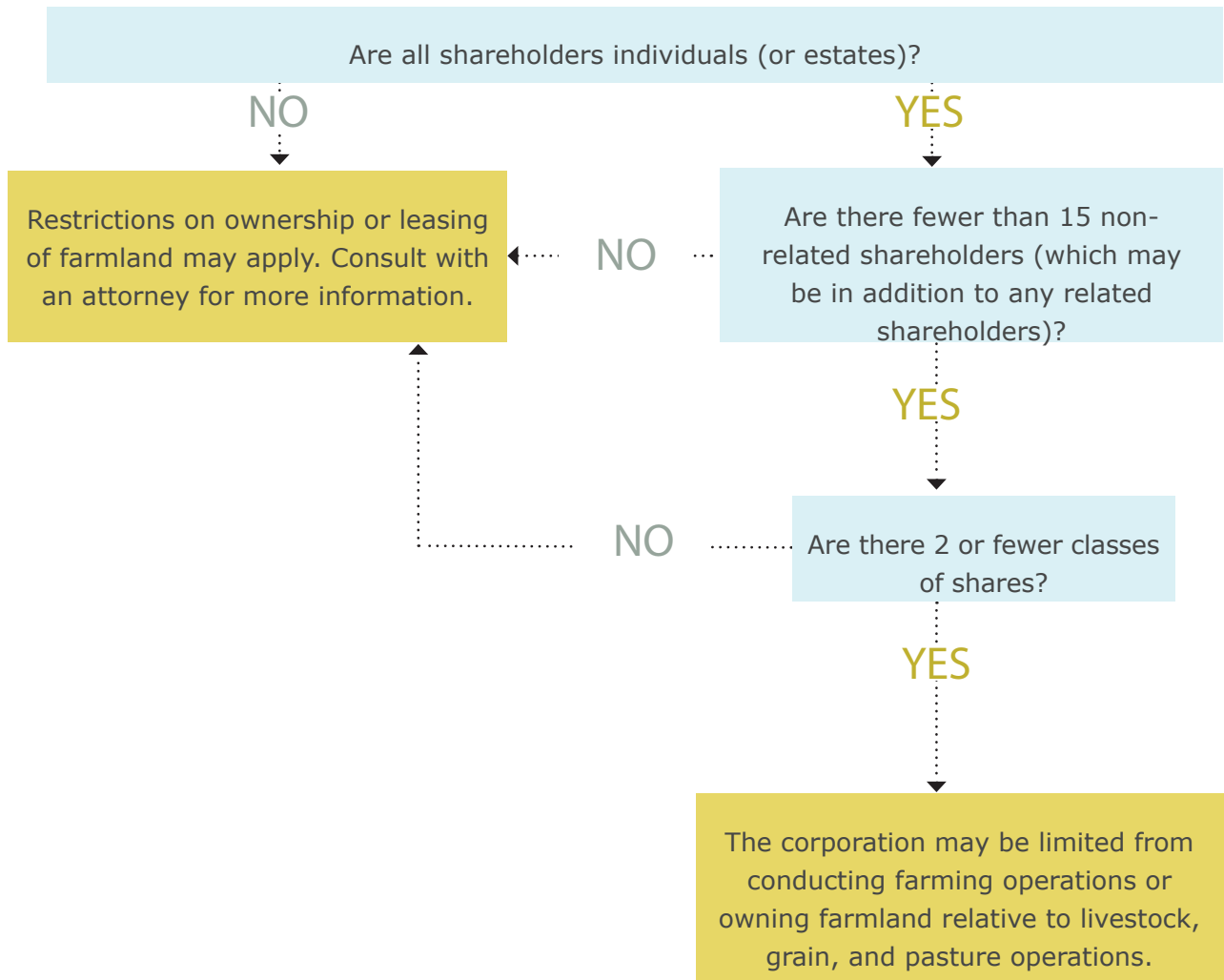
Kansas Anti-Corporate Farming Flowchart

Kansas broadly prohibits corporations and LLCs from owning or leasing agricultural land in the states. However, there are exceptions for small entities, family-owned entities, and those engaged in farming, among other exceptions. The following flowchart provides an overview of some parts of Kansas law.



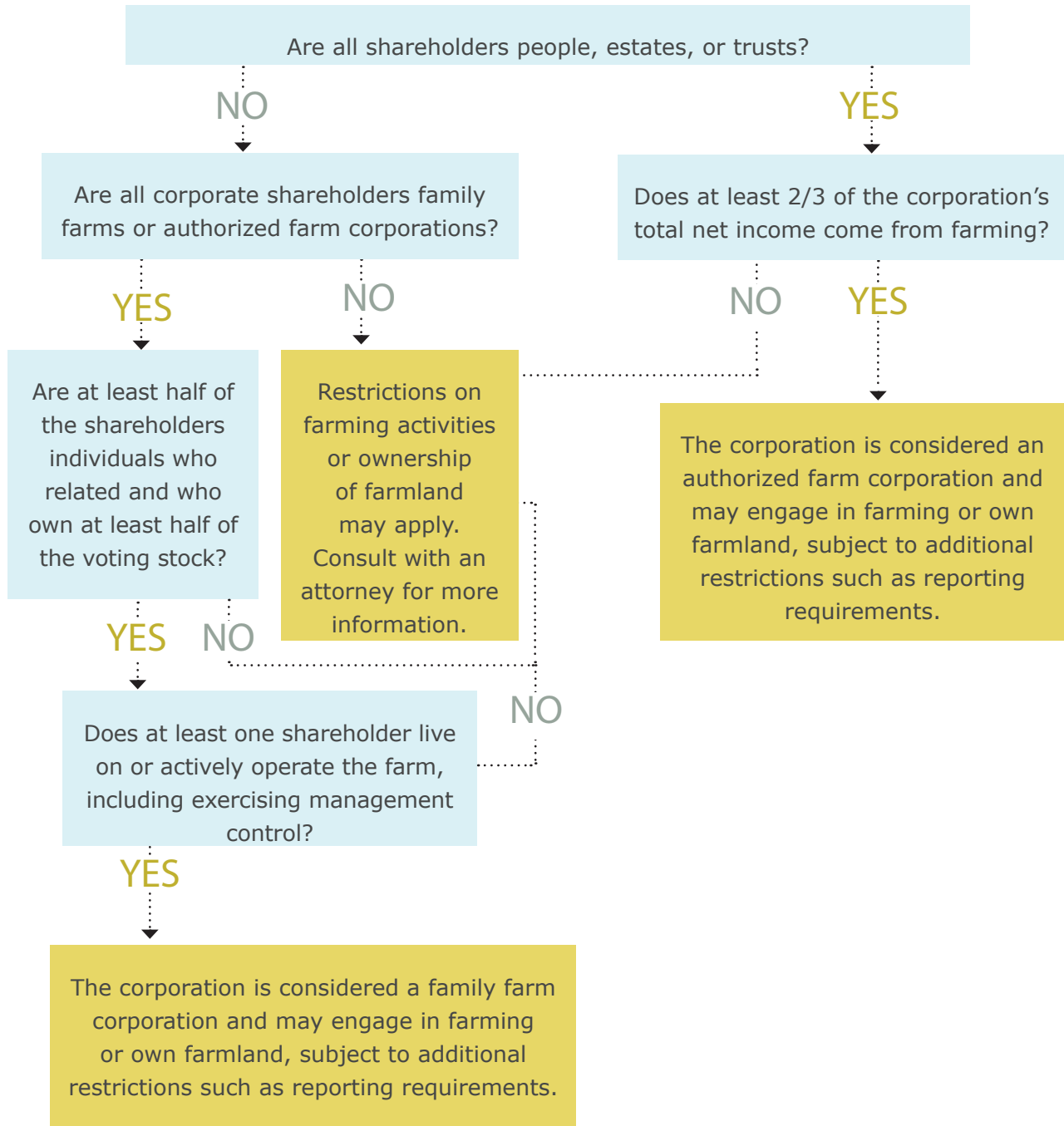
Wisconsin Anti-Corporate Farming Flowchart

Wisconsin law prohibits corporations from carrying on farming or owning land for farming, generally speaking. The law applies to livestock and row crop operations, primarily. It is unclear if Wisconsin law applies to LLCs. Farmers considering forming an LLC should read the flowchart below as if they were forming a corporation. If the anti-corporate farming law might apply to the operation, a person forming an LLC should also seek counsel.



Missouri Anti-Corporate Farming Flowchart

Generally speaking, Missouri law prohibits corporations from engaging in farming or owning farmland. Family owned and operated corporations are exempt, among other types of entities. It is unclear if Missouri law applies to LLCs. Farmers considering forming an LLC should read the flowchart below as if they were forming a corporation. If the anti-corporate farming law might apply to the operation, a person forming an LLC should also seek counsel.



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REPONDS

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